

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION**

TONY CHISOLM

PETITIONER

V.

CIVIL ACTION NO. 5:22-CV-43-KS-FKB

**BURL CAIN, MDOC,
Commissioner**

RESPONDENT

**ORDER ADOPTING REPORT AND RECOMMENDATIONS AND
DISMISSING CASE**

On April 26, 2023, the U.S. Magistrate Judge entered his Report and Recommendation (“R&R”) [13] upon the Motion to Dismiss [11] filed by the Petitioner, recommending that the Court dismiss this matter with prejudice due to the untimeliness of Plaintiff’s Petition. Objections to the R&R were due by May 10, 2023. To date, Plaintiff has filed no objection. For the reasons set forth below, the Court finds that dismissal is warranted.

When parties do not file written objections, courts apply a “clearly erroneous, abuse of discretion and contrary to law” standard of review to a report and recommendation. *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989) (“[T]he ‘clearly erroneous, abuse of discretion and contrary to law’ standard of review ... is appropriate ... where there has been no objection to the magistrate’s ruling.”); *Rodriguez v. Bowen*, 857 F.2d 275, 276–77 (5th Cir. 1988) (“[A] party is not entitled to de novo review of a magistrate’s finding and recommendations if objections are not raised in writing by the aggrieved party ... after being served with a copy of the magistrate’s report.”).

As required by 28 U.S.C. § 636(b)(1), the Court has conducted an independent review of the entire record and finds that the Magistrate Judge has succinctly set forth the timeline of events in this matter and applied the applicable statutory law. The Court concludes that the Report and Recommendation [13] is an accurate statement of the facts and a correct analysis of the law in all respects. The Court concludes that because Plaintiff's Petition for post-conviction relief is untimely and must be dismissed, the Petitioner's Motion to Dismiss should be granted.

Accordingly, the Court agrees with the Magistrate Judge's proposed findings of fact and conclusions of law and finds that they are neither clearly erroneous nor contrary to law. *See Wilson*, 864 F.2d at 122. As such, the Court accepts, approves, and adopts the factual findings and legal conclusions contained in the Report and Recommendation [13] entered by United States Magistrate Judge F. Keith Ball pursuant to 28 U.S.C. § 636(b)(1).

THEREFORE, IT IS HEREBY ORDERED that the Motion to Dismiss [11] filed by Burl Cain is GRANTED. Plaintiff's Petition for Writ of Habeas Corpus [1] is dismissed with prejudice. This case is closed.

SO ORDERED AND ADJUDGED this 15th day of August 2023.

/s/ Keith Starrett
KEITH STARRETT
UNITED STATES DISTRICT JUDGE